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10 Attorneys for Defendants

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13
14 WILDEARTH GUARDIANS,

CASE NO. 4:13-cv-151-RCC

15 Plaintiff,

STIPULATED FEE SETTLEMENT

16 v.

17 UNITED STATES FISH AND
18 WILDLIFE SERVICE and UNITED
19 STATES FOREST SERVICE,

20 Defendants.

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1 WHEREAS, in this case, Plaintiff brought various claims under the Endangered
 2 Species Act (“ESA”), 16 U.S.C. § 1533 *et seq.*, challenging Defendants’ conservation
 3 strategy concerning the Mexican spotted owl (“owl”) in the 11 National Forests
 4 comprising Forest Service Southwestern Region (Region 3). More specifically, Plaintiff
 5 alleged that the decisions made in FWS’s programmatic 2012 Biological Opinions
 6 (“BiOps”) for the 11 National Forests were arbitrary and capricious and that the Forest
 7 Service was not complying with either its substantive or its procedural duties under the
 8 ESA. ECF No. 10.

9 WHEREAS, Defendants disputed those claims and the Parties briefed summary
 10 judgment. ECF Nos. 50-62.

11 WHEREAS, on September 12, 2019, the Court granted in part and denied in part
 12 Plaintiff’s motion for summary judgment. ECF No. 89. The Court held that FWS failed to
 13 adequately assess the owl’s recovery in its programmatic jeopardy analyses and that the
 14 2012 programmatic “BiOps simply do not provide a route to recovery or way to
 15 accurately assess it. The no-jeopardy determination is unsupported, arbitrary, and
 16 capricious because the finding failed to account for recovery” of the owl. ECF No. 89 at
 17 24. The Court also found that the USFS violated its substantive obligations under the
 18 Section 7 (a)(2) ESA by relying on those BiOps. *Id.* at 36-37. The Court then granted an
 19 injunction on all Forest Service timber management actions on the six National Forests
 20 that operated under the 2012 programmatic BiOps – i.e., the Lincoln, Santa Fe, Cibola,
 21 Carson, Tonto, and Gila National Forests – and ordered Defendants to reinitiate Section 7
 22 formal consultation under the ESA. ECF No. 89 at 38; ECF No. 98.

23 WHEREAS, after a series of post-judgment motions and briefing, the parties
 24 reached an out-of-court settlement to resolve the merits of the case. ECF No. 144.

25 WHEREAS, the Court approved that out-of-court settlement and dismissed the
 26 case but kept jurisdiction to resolve any potential disputes with respect to Plaintiff’s
 27 attorneys’ fees and costs. ECF No. 145.

28 WHEREAS, the parties have reached an agreement that obviates the need for any

1 litigation regarding Plaintiffs' claim for attorneys' fees and costs under the ESA, 16
2 U.S.C. §1540(g).

3 NOW, THEREFORE, IN THE INTERESTS OF THE PUBLIC, THE PARTIES,
4 AND JUDICIAL ECONOMY, IT IS STIPULATED BY AND BETWEEN THE
5 PARTIES AS FOLLOWS:

- 6 1. Defendants shall pay Plaintiff a total of \$350,000.00 for attorneys' fees, costs, and
7 other litigation expenses for this lawsuit.
- 8 2. Defendant shall make the payment required by Paragraph 1 and the agreed order
9 below by electronic funds transfer.
- 10 3. Plaintiff agrees to furnish Defendants with the account information necessary to
11 effectuate the payment required by Paragraph 1 of this stipulation. Defendants
12 agree to submit all necessary paperwork for the processing of the attorneys' fees
13 award to the Department of the Treasury's Judgment Fund Office within 10
14 business days of the Court's approval of this Agreement or the receipt of the
15 information described in this Paragraph, whichever is later.
- 16 4. Plaintiff agrees to accept Defendants' payment of \$350,000.00 in full satisfaction
17 of any and all claims for attorneys' fees and costs of litigation incurred in this
18 matter to date. Plaintiff agrees that receipt of this payment from Defendants' shall
19 operate as a release of Plaintiff's claims for attorney's fees and costs in this matter
20 to date.
- 21 5. Plaintiff reserves the right to seek additional fees and costs incurred subsequent to
22 this Stipulation arising in any future litigation or continuation of the present action.
23 Defendants reserve the right to contest fees claimed by Plaintiff or Plaintiff's
24 counsel, including hourly rates and the number of hours billed, in any future
25 litigation or continuation of the present action. Further, this Agreement as to
26 attorneys' fees and costs has no precedential value and shall not be used as
27 evidence in any other attorneys' fees litigation.
- 28 6. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement

1 that Defendants is obligated to pay any funds exceeding those available, or take
2 any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any
3 other appropriations law.

4 7. This Agreement shall be binding on the parties and their successors, agents,
5 designees, employees, and all those acting by and through their authority. The
6 parties agree that this Stipulation was negotiated in good faith and that this
7 Stipulation constitutes a resolution of claims that were denied and disputed by the
8 parties. By entering into this Stipulation, the parties do not waive any claim or
9 defense.

10 8. The undersigned representatives of each party certify that they are fully authorized
11 by the parties they represent to agree to the terms and conditions of this Stipulation
12 and do hereby agree to the terms herein.

13 9. The parties hereby jointly and respectfully request that the Court review and
14 approve the terms of this stipulation, and retain jurisdiction to enforce its terms.

16 | It is so stipulated.

18 | Dated: May 27, 2021

Respectfully Submitted,

/s/ Steven Sugarman
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**UNITED STATES DISTRICT COURT
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WILDEARTH GUARDIANS,

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Plaintiff,

V.

UNITED STATES FISH AND
WILDLIFE SERVICE and UNITED
STATES FOREST SERVICE,

CERTIFICATE OF SERVICE

Defendants.

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Rickey D. Turner, Jr.
RICKY D. TURNER, JR.